

MS AF
PATENT
0600-1059

IN THE U.S. PATENT AND TRADEMARK OFFICE

In re application of

Jakob SOCHER Conf. 3160

Application No. 10/577,724 Group 1782

Filed May 2, 2006 Examiner Wood, Ellen S.

DECORATIVE BAND, FOOD PACKAGING COMPRISING ONE SUCH BAND AND PRODUCTION METHOD THEREOF

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

June 6, 2011

Sir:

Applicant requests a pre-appeal brief review of the final rejection mailed January 6, 2011 in the above-identified application. No amendments are being filed with this request. A Notice of Appeal is filed concurrently herewith. The review is requested for the reasons advanced on the attached sheets.

Respectfully submitted,

YOUNG & THOMPSON

/Jeremy G. Mereness/

Jeremy G. Mereness, Reg. No. 63,422
209 Madison Street
Suite 500
Alexandria, VA 22314
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

JGM/fb

REASONS IN SUPPORT OF REQUEST FOR REVIEW

A pre-appeal brief review is respectfully requested of the final rejection of claims 13-15 and 24-26 under 35 USC 102(b) as being anticipated by Weder (US Publication 2004/0237399; "WEDER").

It is respectfully submitted that the rejections of claims 1, 14 and 18 include at least a clear factual error, or in the alternative, a clear legal error, as explained below.

The final rejection on page 2 contends that Figure 7 of WEDER discloses a wrapper constructed of a sheet material having two opposite free ends 24d and 26d, the sheet material extending longitudinally from a first of the two free ends 24d to a second of the two free ends 26d to form a first longitudinal edge 40d and a second longitudinal edge 20d, citing paragraphs [0060] and [0061].

In the Remarks of the Amendment filed on October 22, 2010, it was argued that Figure 7, as constructed above, fails to teach a first longitudinal edge, from the first of the two free ends to the second of the two free ends, being rectilinear as required by the claimed invention.

The final rejection on page 6, in apparent response to the foregoing Remarks, argues that the two longitudinal edges of independent claim 13 are satisfied by elements 24d and 26d of Figure 7, contending that both 24d and 26d being longitudinal and rectilinear. However, as indicated above, the final rejection

previously identifies elements 24d and 26d as the two opposite free ends of the claim. These same elements 24d and 26d cannot also be the longitudinal edges as recited by the claim.

Figure 7 of WEDER, annotated with labels corresponding to the final rejection at pages 2 and page 6, is provided below for the Examiner's convenience. The labels in regular type correspond to the rejection at page 2. The labels in *italics* correspond to the rejection at page 6.

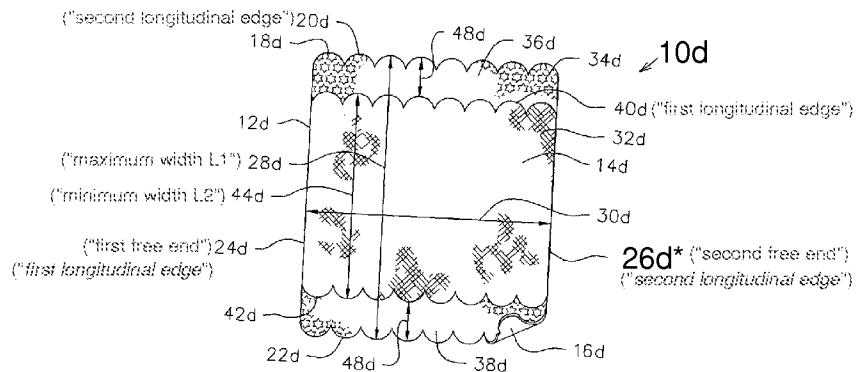


Figure 7 of US Publication 2004/0237399
(annotations added in parentheses)

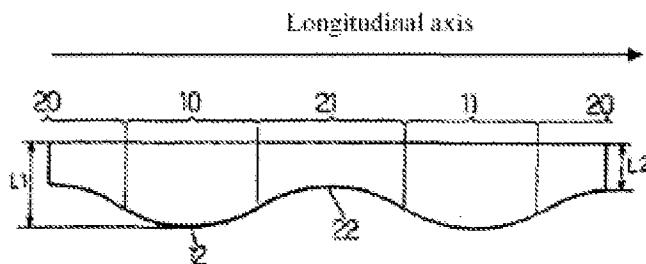
*Note: Reference numeral 26d is added based on paragraph [0061] of the reference; the reference numeral 26d is missing on Figure 7 as published.

The final rejection on page 2 identifies elements 40d and 20d as the first and second longitudinal edges, respectively. As can be seen in the Figure above, these first and second edges are clearly not rectilinear.

In the alternative, where the final rejection identifies elements 24d and 26d as the first and second longitudinal edges as proposed on page 6, then elements 20d and 22d must correspond to the first and second free ends of the claim. In this case, WEDER fails to teach any longitudinal

portion along the length between elements 24d and 26d having widths L1 or L2 wherein L2 is between one third and two thirds of L1. On the contrary, it is readily apparent that the width (i.e., the distance between elements 24d and 26d) is constant all along the longitudinal direction of 24d and 26d (see, e.g., element 30d). Thus, even in this alternative application of WEDER, the features of claim 13 are not all anticipated.

The term "longitudinally" in claim 13 is recited in terms of a direction extending "from a first of the two free ends to a second of the two free ends to form a first longitudinal edge and a second longitudinal edge." Claim 13 further recites "the first longitudinal edge, from the first of the two free ends to the second of the two free ends, is rectilinear and parallel to a longitudinal axis of the band," (emphasis added). Hence, the longitudinal axis runs in the same direction as the rectilinear first longitudinal edge. In terms of Figure 2, for example, the longitudinal axis would be understood as follows:



In terms of WEDER Figure 7, however, if elements 40d and 20d correspond to the first and second longitudinal edges of claim 13 as proposed on page 2 of the final rejection, the

longitudinal axis would correspond to a direction of the horizontal width of WEDER, such as (for example) that indicated by element 30d. No edge disclosed in Figure 7 in this longitudinal direction is rectilinear.

On the other hand, if the elements 24d and 26d correspond to the first and second longitudinal edges of claim 13 as proposed on page 6 of the final rejection, then the longitudinal axis corresponds to a direction of the vertical width of WEDER, such as (for example) that indicated by element 20d. In this construction, there is no first and second portions, extending longitudinally (i.e. in the direction along the longitudinal axis), having widths L1 and L2 as recited in claim 13.

It is therefore respectfully submitted, based at least on the reasons set forth above, that WEDER cannot be found to teach all the features of claim 13.

Accordingly, it is respectfully submitted that the rejections of record under Section 102 cannot be sustained and must be reversed; such is respectfully requested.